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JOHN WAIHEE
GOVERNORCLIFFORD K. HIGA
DIRECTOR

STATE OF HAWAII
CABLE TELEVISION DIVISION
 DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
 PACIFIC TOWER, SUITE 1400
 1001 BISHOP STREET
 HONOLULU, HAWAII 96813
 (808) 586-2820
 FAX (808) 586-2825

SUSAN DOYLE
DEPUTY DIRECTORJASMINE FUJIWARA UEHARA
CABLE ADMINISTRATOR

To: Office of the Secretary
 Federal Communications
 Commission
 1919 M Street, N.W.
 Washington, D.C. 20554

Date: August 4, 1993

Re: Reply Comments of the State
 of Hawaii on Petitions for
 Reconsideration

92-266

Attention:

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1	Original and 10 copies regarding In re Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992

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REMARKS:

Enclosures

Jasmine Fujiwara Uehara
 Jasmine Fujiwara Uehara
 Acting Cable Television
 Administrator

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED**AUG - 4 1993**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Matter of

Implementation of Sections of the
Cable Television Consumer
Protection and Competition
Act of 1992

Rate Regulation

MM Docket No. 92-266

REPLY COMMENTS OF THE STATE OF HAWAII ON
PETITIONS FOR RECONSIDERATION

The State of Hawaii (the "State"), pursuant to Section 1.429 of the Federal Communications Commission's ("FCC or Commission") rules, hereby submits the following reply comments on the Petitions For Reconsideration of the Commission's Report and Order (the "Order") in the above captioned proceeding. FCC 93-177, MM Docket No. 92-266, (released May 3, 1993). The State submitted reply comments in the initial phase of the rulemaking proceeding that resulted in the release of the above described Order. Therefore, the State has standing to submit these comments pursuant to Section 1.106 (b)(1) of the Commission's Rules.

The State wishes to provide its general views on the numerous petitions filed requesting various modifications to the proposed rate regulation benchmarks and on the confusion created in modifying the implementation date for rate regulation.

THE COMMISSION'S INTENT TO ASSURE TIMELY CONSUMER REFUNDS IS LAUDABLE; HOWEVER, TYING THE DATE REFUND LIABILITY ATTACHES TO THE EFFECTIVE DATE FOR RATE REGULATION WILL NOT ALLOW FRANCHISE AUTHORITIES TO IMPLEMENT REGULATION IN AN ORDERLY FASHION.

The State supports efforts by the FCC to bring the benefits of rate regulation under the 1992 Cable Act to consumers in Hawaii as quickly as possible and to

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establish, at the earliest possible date, refund liability in the event a particular system's rates are above a "reasonable" rate as determined through final rules established by the Commission. Nevertheless, the present situation has created confusion among Hawaii's cable operators and consumers as well as the State's officials responsible for administering the Commission's proposed rate regulation rules.

An initial date of June 21, 1993 was established for implementation of rate regulation which the Commission delayed until October 1, 1993. On July 27, 1993, the Commission advanced the implementation date to September 1, 1993. The State views these changes with mixed emotions for while we wish to protect our citizens from unreasonable rates, these changes create confusion for cable consumers, as well as the parties involved in the regulatory process. For example, the State has been unable to advise its consumers as to when or even whether they can expect to see changes in the cable rates as a result of the implementation of rate regulation.

**THE COMMISSION SHOULD SET AN IMPLEMENTATION DATE THAT
ALLOWS FRANCHISE AUTHORITIES TO ACCOMPLISH RATE
REGULATION IN AN ORDERLY AND EFFICIENT MANNER.**

The State has been consistent in its support of returning regulation of cable rates to the franchise authority and the State intends to apply for certification at the earliest possible date. Nevertheless, it is necessary that we fully understand the parameters of our rate regulation authority before we commence. To initiate the certification process before the benchmark and cost-of-service regulations are finalized will result in inefficient regulation. As of this date, the Commission is still in the process of reconsidering and adjusting the benchmarks. While the Commission has indicated it plans to provide relief from undue regulatory burdens to small cable operators, the Commission has not specified the relief it intends to provide. Furthermore, the Commission has yet to deal with the benchmarks on a

going-forward basis, having left that question open in the Order.¹ Finally, comments in the cost-of-service Notice of Proposed Rule Making ("NPRM"), MM Docket No. 93215, FCC 93-353 (released July 16, 1993) may be filed until September 14, 1993.

The State does not believe that it is in the public's interest for the State (or the FCC for that matter) to be placed in a position to have to undertake the initial rate regulation process more than once. Yet the State fears this will result from the current implementation schedule.

THE EFFECTIVE DATE FOR REFUNDS AND THE IMPLEMENTATION DATE FOR RATE REGULATION CAN BE DISTINCT. THE DATE FOR CALCULATING REFUND LIABILITY CAN PRECEDE THE IMPLEMENTATION DATE FOR RATE REGULATION.

The State respectfully recommends that the Commission not tie the date for implementing the initial rate regulation process with the date for refund liability. The 1992 Cable Act does not appear to compel the Commission to have those two dates correspond.

The State asserts that unless the Commission further postpones the date for calculating refund liability, the actual date for initiating rate regulation is relatively unimportant because the amount the consumers will ultimately receive as a result of rate regulation will remain constant. Consumers would receive relief for excessive rates from the date refund liability attaches regardless of the date that rate regulation is implemented.

Thus, the State respectfully suggests that the Commission retain the original June 21 date for refund liability and establish an implementation date that permits

¹ "Forms prescribing the precise methodology for calculating and allocating external costs and applying the price cap regime on a going-forward basis will be released shortly." Report and Order, at paragraph 253, n. 604. This issue has not been resolved to date and such forms are not yet available.

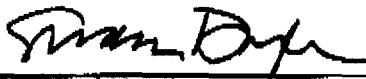
rate regulation to be undertaken in an efficient and considered manner. This will reduce the possibility that cable operators and franchising authorities will have to redo initial rate regulation calculations as a result of changes to the benchmark scheme and implementation of cost-of-service regulations which occur after the initial rate regulation process has been completed. Moreover, since every change a cable operator makes in service offerings or billing is disruptive to cable subscribers, it is important that the Commission adopt an implementation schedule that will minimize the number of changes cable subscribers will see.

The Commission's concern about the transactional costs associated with rate regulation has led it to develop the benchmark approach as a way of streamlining the rate regulation process. Implementation of inefficient regulatory practices and procedures is inconsistent with the goal to reduce transactional costs and will create confusion among all parties affected by the regulatory process.

WHEN THE BENCHMARK APPROACH DOES NOT PROTECT CABLE CONSUMERS, FRANCHISE AUTHORITIES MUST BE ALLOWED TO UTILIZE COST-OF-SERVICE RATEMAKING PRINCIPLES.

With regard to the modification of the benchmarks, the State wishes to reiterate its position that it supports the development of a benchmark approach which streamlines the regulatory process and produces equitable results to its consumers and its cable operators. To the extent that the Commission makes adjustments to the benchmarks that streamline the process and result in fewer cost-of-service showings, the State supports such efforts. However, the State also reiterates its position that under the Cable Act of 1992 the Commission is compelled to provide the State, its citizens and cable operators the option of utilizing cost-of-service ratemaking principles on an individual system basis.

Respectfully submitted,


for Clifford K. Higa
Director of Commerce
and Consumer Affairs
State of Hawaii

1010 Richards Street
Honolulu, HI 96813
(808) 586-2850

August 4, 1993